

BARBADOS

[Unreported]

Suit No: 207 of 1998

IN THE SUPREME COURT OF JUDICATURE

HIGH COURT

Civil Division

BETWEEN

BARBARA WEEKES - PLAINTIFF

AND

THE ATTORNEY GENERAL - 1ST DEFENDANT
CHIEF MEDICAL OFFICER - 2ND DEFENDANT

**Before The Honourable Madam Justice Maureen Crane-Scott, Q.C,
Judge of the High Court**

2009: November 9, 10

2010: February 22

**Mrs. Beverley Nicholls in association with Mrs. Marguerite Woodstock-
Riley, Q.C. for the Plaintiff**
Senior Crown Counsel, Mr. Wayne Clarke for the Defendants

DECISION

- [1] **Crane-Scott J:** In this action, Barbara Weekes a maid employed at the Psychiatric Hospital (hereinafter referred to as “the Plaintiff”) seeks to recover against the Defendants damages for personal injuries sustained and loss and damage suffered by her consequent on her having been assaulted by an in-patient of the said hospital on February 13, 1997 during the course of her employment.
- [2] The Defendants admitted liability before *Worrell J.* on December 10, 2008, after which Judgment was entered for the Plaintiff and the Defendants were ordered to pay the Plaintiff’s damages to be assessed, interest and costs to be agreed or taxed certified fit for two Counsel.
- [3] It now falls to this Court to assess the quantum of damages to be paid to the Plaintiff pursuant to the Judgment.
- [4] At the outset, Counsel for the Plaintiff, Mrs. Woodstock-Riley, Q.C. advised the Court that the Plaintiff’s evidence in support of her claim together with the various heads of damages sought were as disclosed in the Plaintiff’s affidavit filed on October 28, 2009 together with its numerous medical reports and other exhibits.
- [5] Counsel for the Defendants, Mr. Wayne Clarke informed the Court that the Defendants had accepted the Plaintiff’s evidence as set out in her affidavit. He stated that the Defendants had agreed to all but one of the items of special damages claimed, but advised that the Defendants would be disputing all heads of general damages claimed by the Plaintiff and set out in her affidavit.

- [6] **The Plaintiff's Evidence:** The Plaintiff deposed that she was in the waiting room of the Administration Office at the Psychiatric Hospital on February 13, 1997 when she heard shouting in the Office. She realized that it was an in-patient, Elvis Moore who was shouting and that he was threatening to kill her. She asked him to leave the Office and warned him that she would telephone the Principal Nurse's office.
- [7] She then heard someone shout "*Murder! Watch Out!*", after which she felt a cuff to the back of her neck. She tried to run away by jumping over the rails in the Office. The man grabbed at her, causing her to fall and continued his assault on her, beating her on her left shoulder, breasts, vagina and legs. He also held onto her left foot which had been caught in the railing and was pulling at it.
- [8] Throughout the assault, Elvis Moore threatened to kill her with a knife and mimicked the sound of gunshots by shouting "*Pow Pow*". Her ordeal continued when a piece of furniture fell on her and her attacker pummeled onto it while she was helplessly trapped underneath, all the while shouting obscenities at her and threatening, "*If I had a knife I would stab you up and kill you*".
- [9] This threat was repeated several times while he continued to punch and pull at her left leg. She was eventually rescued when 2 or 3 men pulled the deranged man off of her.
- [10] The Plaintiff described her feelings during the horrific attack in the following terms:

"During the assault I tried really hard to get Mr. Elvis Moore off me but he was out of control with rage and anger. He beat and beat me during the assault that I felt like I was sinking into a black hole. The pain of the attack left me with little physical

energy to fight him off me as Mr. Elvis Moore continued his assault. The voices in the Administration Office became distant as I sank further and further into the blackness. I thought I was dead. The light faded and the voices became more distant as I felt myself sinking further into the darkness. I am not sure how long the darkness stayed with me but it felt like a long time, then I was pulled out of the darkness when I heard voices again.”

[11] The Plaintiff also deposed that she was 42 years having been born on December 21, 1954 and had worked as a maid at the Psychiatric Hospital since 1978. She was at the date of the incident, an active woman with 2 children who lived with her.

[12] Describing the impact of the incident on her social life, the Plaintiff deposed as follows:

“I had not been in a relationship for some months but I was open to meeting someone new. Now, nearly 13 years after the incident I am not interested in forming an emotional or physical relationship with any man. I have lost interest in sex and in myself as a woman. I feel like I am damaged goods and that no man would want me with all the pain that I am in on a daily basis. I cannot look after myself and what man would want me when I cannot do my household and bedroom duties? Before the assault on me I enjoyed my independence and was responsible for looking after my household which included but was not limited to washing, cooking, cleaning, gardening and doing my own gardening. My hobbies included gardening, walking, dancing, catering for parties and reading.”

[13] **The Medical Evidence:** Shortly after the attack the Plaintiff was seen by a medical doctor and treated with a course of oral analgesics. Several hours after the attack she began experiencing a left-sided pressing headache. She also noted pain in the back of her neck, left shoulder, both feet and left leg. In the days, weeks, months and years which elapsed between February 1997 and March 2009, the Plaintiff continued to receive medical attention from various doctors and from a physiotherapist and a physical therapist. Their medical reports were attached to her affidavit as “**Exhibits BW1- BW9**” as follows:

- 1.) Reports from Dr. Sharon Harvey, psychiatrist, dated 7th November, 2006 “**BW1**”; 19th March, 2008 “**BW2**” and 30th March, 2009 “**BW3**”;
- 2.) Report from Dr. Robin Smith, medical practitioner, dated 8th August, 2003 “**BW4**”;
- 3.) Report from Dr. Sean Marquez, neurologist, dated 23rd May, 2002 “**BW5**”;
- 4.) Report from Ms. Margaret Levett, registered physiotherapist dated 8th July, 1999 “**BW6**”;
- 5.) Report from Dr. R. Hinds, general practitioner, dated 22nd June, 1999 “**BW7**”;
- 6.) Medical Report from Dr. Sherry Belle, general practitioner, dated the 2nd December, 1997 “**BW8**”;
- 7.) Report from Ms. Jacqueline King, registered physical therapist dated the 20th March, 2008 “**BW9**”.

[14] **Medical Report of Dr. R. Hinds dated 29th June, 1999 - “BW7”:** The Plaintiff was seen by Dr. Ronald Hinds, a registered medical

practitioner, on February 17, 1997, some 4 days after the attack. She made the following complaints:

- a. pain in the left thigh;
- b. pain on the left side and behind the neck;
- c. pain of the left side of her head which was severe;
- d. pain in the left shoulder radiating down to her left breast;
- e. dizziness.

[15] On examination, she was found to be suffering from a haematoma of the inner aspect of the lower third aspect of her left thigh as well as on the upper third of her lower leg just below the knee.

[16] There was limitation of movement of her neck in all directions. She was found to have tenderness in the

- upper back and the posterior lower neck
- superior aspect of the right shoulder
- right buttock
- lower abdomen

[17] There was no limitation of movement of the right shoulder but movement was painful. She was treated with anti-inflammatory medication and given sick leave.

[18] The Plaintiff was again seen by Dr. Hinds on 21st February, 1997. She complained of stiffness of her back and pain in

- both shoulders
- the back of the neck
- the right side of the neck

[19] Physical examination revealed that there was no limitation of movement of either shoulder but there was pain at her extreme range of movement. Her medication was continued.

- [20] She was next seen by Dr. Hinds on 8th March, 1997. On that occasion she was feeling better. Her neck was still hurting a little and her left leg was numb at times. She complained of a pain in her left shoulder when she washed and wrung out clothes and her neck pained if she had to sit for a long time. She also complained of stomach problems which were thought to be due to the medication. The medication was stopped and she was given an acid depressant.
- [21] The physical examination on that visit revealed discomfort on rotation of her neck to the right and pain mainly in her right shoulder and right side.
- [22] The Plaintiff was not seen by Dr. Hinds until a little over 2 years later, on June 29, 1999 by which time she had been declared medically unfit for work.
- [23] On that visit, she had numerous complaints. She complained of numbness, spasms and pins and needles of the left side. She would drop things as the power in her grasp seemed to have diminished at times. She also complained of pain mainly in the left shoulder, lower back, upper back and left hip. She complained of headaches mainly on the left side and frontal part of her head.
- [24] On examination, the Plaintiff was found to be tender in both supra-clavicular regions. There was no limitation of movement of her shoulders. Other systems were found to be normal. She was started on amitriptyline, an anti-depressant, in low dose to help her to sleep at night.
- [25] Following her 4 visits and examinations between 1997 and 1999, Dr. Hinds' conclusions and diagnosis of the Plaintiff's condition was as follows:

*“I believe that Ms. Weekes suffered from soft tissue injuries as I understand no bony injuries were detected on x-rays. The possibility of nerve damage must be considered but I do not know of any results to tests carried out by her neurologist. I feel that **she has been psychologically traumatized and in my opinion needs a consultation with a psychiatrist.***

It seems that Ms. Weekes’ life has been severely affected. She feels that she cannot function as before. Any kind of sustained physical effort results in a recurrence of her symptoms. She feels she cannot function at the same level as before.

She has lost interest in relationships with the opposite sex. She feels she has lost the ability to work for herself and to enjoy life as before. She has seen a number of doctors and does not feel any significant improvement has been made.

I find it difficult to estimate how long she will remain in this state as it already has been over 2 years since she was struck. She will need continual physical and psychological support for some time yet.”

- [26] Medical Report of Dr. Sherry Belle dated 2nd December, 1997 - “BW8”: The Plaintiff was also seen by, family physician, Dr. Sherry Belle on March 20, 1997 just over 1 month following the attack.
- [27] She complained of pain in her left hip with radiation to her left leg, pain in her neck, left shoulder and lower back. On clinical examination, the Plaintiff appeared to be in mild discomfort.
- [28] There was significant tenderness over the cervical spines C5, C6 and C7 and extending over the left trapezius (shoulder) muscle. Flexion and extension were slightly limited by pain. Lateral movement of the

- neck was also decreased with a more limited range of movement on the left than on the right.
- [29] There was no obvious swelling of Ms. Weekes' left hip or lower back and her gait was normal. There was full range of movement of the left hip and knee but this was limited by pain particularly when the patient attempted abduction of the hip. Straight leg raising was ninety degrees bilaterally with only slight limitation due to pain on the left.
- [30] Dr. Belle assessed the Plaintiff as having soft tissue injuries to the neck, lower back, left hip and left knee. She was treated with anti-inflammatory medication and muscle relaxants.
- [31] The Plaintiff was reviewed by Dr. Belle on no less than 5 occasions subsequently.
- [32] Following her first review on 1997-04-08, she was referred to Mrs. Margaret Levett for physiotherapy to the affected areas.
- [33] She attempted to return to work between 1997-06-09 and 1997-07-09. During this time, periods of standing or mopping would cause the pain to surface and even sitting in the bus on her way to work was painful. Because of this, a letter was sent to her supervisor suggesting lighter duties and avoidance of heavy lifting. Despite this, the Plaintiff continued to experience muscle pain.
- [34] When the Plaintiff was reviewed on 1997-07-09, she had lost 6 lbs. She also exhibited tenderness over her trapezius muscles bilaterally as well as her left thigh. Her original drug regime was restarted and she was again forced to be away from work.
- [35] Some 2 weeks later (1997-07-23) there was little significant change in the Plaintiff's condition. She continued to have myalgia (muscle pain), particularly in her neck, hip and shoulders although there was

full range of movement on examination. She was also referred to an orthopedic surgeon for further assessments.

- [36] In December 1997, Dr. Belle's professional assessment of the Plaintiff's condition and prognosis was as follows:

*“Recovery from an injury such as this, is a very individual process which usually requires a long period of rehabilitation before all symptoms are overcome. In addition, **a significant emotional component is present because of the extreme traumatic nature of the events leading to injury. Both of these components will have long term effects on Mr. Weekes in the future.** Possible continuing pain and stiffness, as well as periods of fear and depression are to be expected in cases such as this. It is anticipated that a period of recovery extending to between 18 to 24 months will be needed and even then residual distress may persist.”*

- [37] Report of Mrs. Margaret Levett, Physiotherapist dated 8th July, 1999 August, 2003 - “BW6”: Following the advice of Dr. Sherry Belle, the Plaintiff started physiotherapy with Margaret Levett, registered physiotherapist, on July 8, 1999.

- [38] Mrs. Levett's specific findings were confined to the Plaintiff's neck, shoulder, left arm and hand, upper and lower back and the lower limbs. On her initial examination, the Plaintiff was found to be very tense and to move in a rigid fashion. While her active range of movement was full in the affected areas, there was pain and tightness at the end of the range of motion.

- [39] Mrs. Levett also reported that the Plaintiff had complained of pain on attempting to carry out any housework. She also reported having a

- fainting sensation on sudden neck movements. Additionally, excessive activity in the upper limb resulted in her experiencing pain in the neck and shoulders. Mrs. Levett also reported that the Plaintiff was unable to work effectively due to pain and muscle fatigue in the muscles of her neck, shoulder and back.
- [40] The Plaintiff was given Transcutaneous Electrical Nerve Stimulation (TENS) i.e. a pulsed ultrasound at a low setting to promote healing of the affected joints, ligaments, tendons and muscles around her neck and shoulders as well as of her hamstring gluteal and quadriceps muscles.
- [41] She was also given soft tissue manipulation, heat and stretching exercises and advised to have physiotherapy twice weekly to be followed by a graduated programme of exercises designed to enable her to return to work.
- [42] Due to the unavailability of funds, the Plaintiff was seen by Mrs. Levett on an irregular basis. Mrs. Levett noted that when the Plaintiff was having regular physiotherapy, she had shown significant improvement. This had led Mrs. Levett to assume that the Plaintiff would have gotten better with time. In Mrs. Levett's opinion, had the Plaintiff been able to afford more frequent visits over a longer period, she would have shown more recovery.
- [43] Mrs. Levett's report also found that in 1999 the Plaintiff was showing signs of Fibromyalgia (which she defined as chronic pain with generalized weakness) and was medically unfit to work. She continued to have pain which was sufficient to disable her on most days and at other times managed to do only the most minimal of

- household chores. On days when her pain and spasms were bad, her daily ablutions are left until she can manage to get out of bed.
- [44] Regarding the Plaintiff's prognosis, Mrs. Levett concluded that the Plaintiff had given every indication of long term disability. Observing that that there is no cure for chronic pain or Fibromyalgia, Mrs. Levett noted that patients with this condition are taught to prevent mental and physical stress. Since this is not always possible, patients are also advised to seek medical attention and to obtain medication to induce sleep, analgesics to ease the pain, physical therapy which incorporates soft tissue manipulation and stretching and yoga to train the mind.
- [45] Report of Dr. Sean Marquez, Neurologist dated 23rd May 2002 - "BW5": The Plaintiff was referred to and first seen by Dr. Sean Marquez, a board certified consultant neurologist, on December 22, 1997- some 10 months following the incident.
- [46] Following his clinical examination, she was diagnosed to be suffering with post-traumatic stress disorder and soft tissue injuries of the neck, lower back and limbs.
- [47] Due to the numbness she was experiencing in her left arm and leg, the Plaintiff underwent an EMG/nerve conduction study on December 23, 1997 and a Tibial Somatosensory Evoked Potentials Study on December 31, 1997. As the results of both these tests were normal, Dr. Marquez concluded that the Plaintiff was experiencing *"somatization symptoms in the setting of a post-traumatic stress disorder"*. Dr. Marquez recommended that she see a psychiatrist or a psychologist. She was also prescribed an anti-depressant medication and recommended to undergo physiotherapy with Mrs. Levett.

- [48] The Plaintiff was next reviewed by Dr. Marquez on February 11th, March 5th and April 24, 1998. This was approximately 12-14 months after the attack. During this time she continued to complain of left hip pain and left shoulder pain radiating into the left breast. She was sent for X-rays of the cervical spine on April 21, 1998, but these proved normal.
- [49] She was next seen on May 21, 1998 when she complained of having “collapsed” while at work. She also complained of nausea, vomiting and epigastric pain. She was advised to continue her anti-depressant medication, Paxil, as well as to continue the course of Losec which had been prescribed by, her physician, Dr. Malcolm Grant.
- [50] Dr. Marquez reviewed the Plaintiff once again on August 7, 1998 and September 4, 1998, i.e. approximately 18-19 months following her ordeal. She continued to complain of dyspeptic symptoms. She informed him that she had been sent by another physician for a barium meal test which was reportedly normal. However, she continued to complain of numerous somatic complaints, poor sleeping, decreased libido and other symptoms suggestive, in Dr. Marquez’s view, of an underlying depression.
- [51] Dr. Marquez raised the issue of seeking psychiatric or psychological help with the Plaintiff as he had done on previous occasions, but the Plaintiff repeatedly refused such a referral. Due to the ongoing symptoms in her lower back, she was sent for a CT of the lumbosacral spine which was performed on September 10th, 1998 and the results of which were normal.
- [52] The Plaintiff was next seen by Dr. Marquez on September 24th, 1998. On this occasion she reported that she had improved somewhat. She

was advised to follow an abdominal and back strengthening regime and was prescribed the usual anti-depressant medication.

[53] The Plaintiff was next seen on November 26th, 1998 and January 27, 1999. She reported that she had been medically boarded on May 27, 1999.

[54] She was followed up on August 13th, 1999. On that occasion she complained of experiencing “*total body pain*” after the bus on which she had been travelling on July 20th, 1999 had hit a bump in the road. According to Dr. Marquez, the Plaintiff also complained of numerous other somatic complaints, including numbness of the left middle finger as well as left leg pain. She was requested to continue her anti-depressant medication and discharged back into the care of her primary physician for his continued care.

[55] On October 30th, 2000, (some 4 years 8 months after the attack) the Plaintiff was once again seen by Dr. Marquez. She continued to complain of intermittent neck and low back pain. She also complained of crawling, formicatory sensations in the left parietal and occipital scalps.

[56] The neck pain radiated into her left arm and down to the medial two fingers of her left hand. It also radiated into the left chest. She complained that she felt “*as if her heart was beating so fast that she could feel it vibrating inside*”. She also complained of feeling “*electricity throughout her body*” and occasional “*weakness in all her limbs*”.

[57] Dr. Marquez reported that the Plaintiff had complained that the intermittent low back pain radiated into the left leg to the foot with

- intermittent numbness and tingling over the entire left leg. She also made numerous somatic complaints in addition to those identified.
- [58] Dr. Marquez' clinical examination revealed no tenderness or paraspinal muscle spasm. Her range of movement was full and mild pain was elicited at the extremes of motion. During his examination, Dr. Marquez reportedly observed the presence of several Waddell's signs. He found no evidence of wasting or fasciculations of muscle, and found that her muscle tone and power were normal. He concluded that the Plaintiff was clearly depressed. He diagnosed her to be suffering from marked Somatization in the setting of Post-Traumatic Stress Disorder.
- [59] Because of her persistent neurologic-type symptoms, Dr. Marquez ordered the Plaintiff to undergo MRI's of the cervical and lumbosacral spine respectively.
- [60] The MRI's were performed on November 21st, 2000. The MRI of the cervical spine was normal while the MRI of the lumbosacral spine revealed mild dessication at the L4-5 intervertebral disc with a small right foraminal disc herniation and mild foraminal stenosis and mild dessication changes at L5-S1 with a small right paracentral disc herniation.
- [61] Dr. Marquez expressed the opinion that while the findings of the lumbo sacral spine were abnormal, they did not fit her clinical picture which consisted of low back pain with radicular symptoms radiating down the left leg. According to him, the findings of the MRI were unlikely to be the cause of her symptoms and surgical intervention was not warranted.

- [62] On the Plaintiff's further review on February 17th, 2001, (some 5 years following the attack) the Plaintiff had still not complied with Dr. Marquez' recommendation to follow an abdominal and back exercise regime. She instead reported that she experienced pain every time she attempted to do these exercises and demonstrated what he termed, "*fear avoidance behavior*".
- [63] The Plaintiff was seen by Dr. Marquez for the final time on May 7th, 2001 (some 5 years 3 months following the attack) after she had experienced another acute flare of "*total body pain.*"
- [64] His clinical examination revealed the presence of several Waddell's signs. He diagnosed the Plaintiff to be suffering with: i) Post-Traumatic Stress Disorder; ii) Somatization, manifest as chronic pain in the neck, lower back and other various parts of her body; and iii) Depression, as a component of her Post Traumatic Stress Disorder.
- [65] While conceding that it was difficult for him to give an accurate prognosis in the Plaintiff's case, Dr. Marquez expressed the view that there is a significant chance that the Plaintiff could receive appropriate management of her underlying depression.
- [66] Dr. Marquez stated that once the Plaintiff's depression is adequately treated, there was the hope that her secondary somatization symptoms including pain symptomology, would gradually decrease and eventually disappear. He recommended that as part of her treatment, the Plaintiff should perform a regular exercise regime which should include abdominal and back muscle strengthening exercises.
- [67] Report of Ms. Jacqueline King, registered Physical Therapist, dated 20th March 2008 - "BW9": The Plaintiff was referred to Ms.

Jacqueline King, registered physical therapist, by her primary care physician, Dr. Malcolm Grant during the year 2002.

[68] She was initially seen by Ms. King on February 7, 2002, just under 6 years following the attack.

[69] She was assessed by Ms. King to be a moderately-sized middle aged woman who moved rather slowly and guardedly. The following findings were made:

1. Full active range of motion in the cervical spine, but pain on movement;
2. Full active and passive range of motion of both upper extremities but pain on external radiation of both shoulders;
3. Decreased active forward flexion of the lumbar spine;
4. Pain on lumbar extension, side flexion and rotation;
5. Normal sensation to light touch and heat in the C1-C7 and L1-L5 dermatomes;
6. Normal muscle tone;
7. Weak abdominal muscle strength;
8. Severe pain on palpitation of upper fibres of both trapezei muscles and lumbar paravertebral muscles.
Trigger points in both trapezei muscles.

[70] Ms. King stated that the Plaintiff had presented with a history and symptoms suggestive of Fibromyalgia and a treatment regime had been developed with that in mind. It appears that due to financial and other psychological constraints caused by her post traumatic stress

disorder, the Plaintiff did not attend the physical therapy sessions as often as required.

[71] She last attended Ms. King's physical therapy clinic in January 2006 and was still experiencing body pain at that time.

[72] Report of Dr. Robin Smith dated 8th August, 2003 - "BW4": On August 8th, 2003 (approximately 7 years 6 months following her attack) the Plaintiff was referred by Dr. Robin Smith to the Psychiatric Out Patient Clinic at the Queen Elizabeth Hospital.

[73] According to Dr. Smith's referral letter, the Plaintiff has since the assault, developed "a generalized anxiety state with frequent disabling panic attacks especially at night associated with insomnia and also frequent "flashbacks" of the physical assault she suffered. She now lives a lonely, timid fearful life and is probably chronically depressed due to chronic back pain and post traumatic stress. Amazingly she has never seen a Psychiatrist for help and part of the reason may be her adamant resistance to going "*anywhere near the Psychiatric Hospital.*"

[74] Report of Dr. Sharon Harvey, Psychiatrist dated 7th November, 2006 - "BW1": The Plaintiff was interviewed by Dr. Sharon Harvey, a Consultant Psychiatrist at the Queen Elizabeth Hospital on August 23rd 2006.

[75] Dr. Harvey made several findings which in her view are specifically linked to the trauma which the Plaintiff experienced during the attack:

"Ms. Weekes felt that she had died during the incident, and still gets recurrent thoughts and dreams about the incident. She reported that she becomes distressed both physically and

psychologically if she has to pass near the hospital and has avoided doing so, as well as talking about the whole episode.

She has experienced a loss of interest and reduced participation in things that she used to like, and generally keeps away from people. She puts herself down now, generally feels “old”, and cannot see a future for her.

She has difficulty sleeping and when she does drift off, she keeps getting up. She recognizes that she is very irritable in her mood, and cannot stay focused. She now feels very uncomfortable in crowds, as it feels unsafe and she begins to panic. She reports being more startled by noises than previously.”

- [76] Dr. Harvey also diagnosed the Plaintiff to be suffering from severe Post Traumatic Stress Disorder. She found that the symptoms have completely altered the Plaintiff’s previous way of life, with both her domestic and occupational life having been disrupted.
- [77] As regards, the Plaintiff’s prognosis, Dr. Harvey anticipated that the Plaintiff will have on-going symptoms of Post Traumatic Stress Disorder, which may be life-long. She recommended that the Plaintiff undergo psychiatric follow-up both from the counseling which this would provide, as well as the medications available for managing the disorder.
- [78] Report of Dr. Sharon Harvey, Psychiatrist dated 19th March, 2008 – “BW2”: In her second report, Dr. Harvey provided an estimate of the cost of the Plaintiff’s future psychiatric care over a 5 year period. She however, suggested that given the severity of the Plaintiff’s condition,

the Plaintiff may require future psychiatric care beyond the suggested 5 year period reflected in the report.

- [79] Report of Dr. Sharon Harvey, Psychiatrist dated 30th March, 2009 – “BW3”: The Plaintiff was reviewed by Dr. Harvey on March 30, 2009. She described feeling numb and feeling like an empty shell. She also reported being frequently unable to cope and often in pain.
- [80] She is still experiencing triggers of the event which cause her distress such as seeing a staff member of the psychiatric hospital or seeing a movie or a talk show which reminds her of some aspect of the trauma.
- [81] She does not go out much because she wants to avoid having to talk about the incident and because she is frequently in pain. She does not sleep well and has dreams about being at work. Her concentration was reportedly poor. She is hyper-vigilant and is easily startled. She is unable to cook and cannot perform most of the household chores and is now dependant on her daughter and son to assist her.
- [82] Dr. Harvey expressed the view that the Plaintiff is still experiencing core symptoms of Post Traumatic Stress Disorder, 12 years after the event. As a result, she expressed the view that the Plaintiff is likely to have a poor prognosis with active symptoms continuing life-long and requiring indefinite psychiatric care, without which her symptoms would show considerable worsening.
- [83] Assessment of Damages: The Court has found it convenient to approach the assessment of damages in this matter by reference to the several heads of loss claimed in the Plaintiff’s Affidavit filed on October 28, 2009. However as will hereafter appear, some adjustments have been made to the Plaintiff’s claim as presented since

the Court has determined that certain items claimed as general damages are more appropriately categorized as special damages.

General Damages – (a) non-pecuniary losses:

[84] *(i) Pain, Suffering and loss of amenities(including severe PTSD):*

Counsel for the Plaintiff submitted that the Plaintiff was claiming a global sum under this head which would take into account i) the physical injuries which the Plaintiff had suffered as a result of the attack; ii) the severe chronic pain syndrome or fibromyalgia which had resulted from her injuries and iii) the severe post traumatic stress disorder (PTSD) which the Plaintiff had developed in the period following the attack.

[85] She drew attention to the evidence which the Plaintiff had given, and which was not in dispute, regarding the horrific nature of the attack, the injuries and disorders which she now suffered and the continuing impact of the assault on her life and her emotional state.

[86] Mrs. Woodstock-Riley cited extracts from the Judicial Studies Board's *Guidelines for the Assessment of General Damages in Personal Injury Cases, 9th Edition* showing the suggested range of awards which had been made for the various injuries claimed. Additionally she referred the Court to the cases of *Bird v. Hussain [1993] Ref: E3-007*; *Cooper v. P&O Stena Line Ltd [1999] C.L.Y. 1480* and *Re Marshall [2001] Ref: C2-006* and to awards which had been made in English Courts for soft tissue injuries combined with secondary chronic pain syndrome or fibromyalgia and for severe post traumatic stress disorder. Applying English Inflation Tables and the current Barbados rate of exchange to the English pound, she calculated the 2009 value of the awards which had been made in those

cases and submitted that the Plaintiff was looking for an award under this head in the range between Bds\$280,000.00 and Bds\$350,000.00 being the Barbados dollar equivalent of £80,000 to £100,000 respectively.

[87] In response, Counsel for the Defendants, Mr. Clarke submitted that the Plaintiff ought not to be awarded a global sum under this head of any more than Bds\$175,000.00 being the Barbados dollar equivalent of £50,000. He sought to distinguish the cases cited by Mrs. Woodstock-Riley and urged the Court to avoid what he termed, the fragmentation of the various awards for the several injuries in order to arrive at the global sum. He cited the case of *Knott v. Haden Maintenance (1998) Ref: C4-012* where Knott had been awarded a global sum of £ 57,500 (updated to £ 75,900) for superficial chemical burn injuries which had left him only faintly scarred but not cosmetically disfigured coupled with a severe disabling post traumatic stress disorder which he had subsequently developed and which had left him subject to panic attacks and, *inter alia*, unable to work, to be left alone or to drive.

[88] Mr. Clarke drew attention to the severity of Knott's condition *vis-à-vis* that of the Plaintiff. He also contended that Dr. Marquez's report had highlighted several factors which were deterrents to the Plaintiff making a full recovery.

[89] In her rebuttal, Mrs. Woodstock-Riley questioned whether Mr. Clarke had been using an outdated edition of the JSB guidelines and urged the Court to be guided only by the most recent guidelines of the Judicial Studies Board which she had cited. She distinguished *Knott's case* on the basis that it could not possibly apply to the current case

where the Plaintiff had suffered soft tissue injuries following the vicious attack and had later been diagnosed with Chronic Pain Syndrome as well as with severe Post Traumatic Stress Disorder.

[90] Mrs. Woodstock-Riley also referred the Court to a very helpful extract from *Personal Injury Schedules: Calculating Damages, 2nd edition, Langstaff, Buchan, Latimer-Sayer & Nelson-Jones @ pp. 162-164* in which the approach to the assessment of damages for separate injuries where there is a perceived overlap is discussed.

[91] Having reviewed the evidence together with the submissions of both Counsel and the authorities cited, the Court finds and accepts the following facts:

- i. Condition prior to attack: Prior to the attack on February 13, 1997, the Plaintiff was a relatively healthy 42 year old woman who worked as a maid at the Psychiatric Hospital. In particular, she had no chronic illnesses and suffered only from short bouts of migraine headaches and sinusitis- (Dr. Sherry Belle- “BW8”);
- ii. Soft tissue injuries post attack: As a direct result of the brutal attack to which she was subjected on February 13, 1997, the Plaintiff suffered painful soft tissue injuries to her neck, lower back and limbs;
- iii. Within hours of the attack, she began to experience a pressing left-sided headache and pain in the back of her neck, left shoulder and in both her feet and her left leg;
- iv. 4 days after the attack, the Plaintiff was still experiencing pain and was attended by Dr. Ronald Hinds and given

another course of pain-killers. - (Dr. Ronald Hinds - "BW7");

- v. 8 days after the attack she was still experiencing pain in both shoulders, in the back of her neck and in the right side of her neck and was also experiencing stiffness in her back;
- vi. By the time of her third visit to Dr. Hinds, just under 3 weeks after the attack, the Plaintiff had begun to feel a little better. However her neck was still hurting and she still experienced pain in her left shoulder when she washed and wrung out clothes and had intermittent numbness in her left leg. Her neck also pained if she had to sit for long periods of time;
- vii. On her first visit to Dr. Sherry Belle, approximately 1 month after the attack, the Plaintiff was still complaining of pain in her left hip radiating to her left leg and pain in her neck and in her left shoulder and lower back;
- viii. The Plaintiff was subsequently reviewed by Dr. Belle on 5 occasions during April, May and July, 1997. During this time she reported mild subjective improvement in her pain. However, she continued to report persistent stiffness in both the cervical region and the lower back/left hip region;
- ix. The Plaintiff's attempt to return to work between 1997-06-09 and 1997-07-09 failed due to the fact that periods of standing or mopping caused the pain to re-surface. Even sitting in the bus on the way to work proved painful. The Plaintiff continued to experience what Dr. Belle diagnosed

as muscle pain (myalgia) despite being given lighter duties and avoiding heavy lifting;

- x. *Chronic Pain (myalgia)*: The Court finds that while Dr. Belle clearly diagnosed the Plaintiff to be suffering with muscle pain (myalgia) in 1997, she stopped short of making a firm diagnosis of either Chronic Pain Syndrome or Fibromyalgia;
- xi. While they are not medical practitioners and are not qualified to make diagnoses or to give expert evidence concerning the Plaintiff's medical condition, both registered physiotherapists who treated the Plaintiff at various times between 1997 and 2006 appear to have felt that the Plaintiff was "*showing signs suggestive of fibromyalgia*" (Levett report- "BW6") and "*had symptoms suggestive of fibromyalgia*"(King report - "BW9");
- xii. The Court is however satisfied, and finds as a fact that in 1999 (approximately 2 years following the attack) the Plaintiff was medically boarded as unfit for work;
- xiii. While no documentary evidence from the NIS medical authority was adduced giving a firm diagnosis of the Plaintiff's condition or stating the medical reasons why the Plaintiff was boarded, the Court accepts the secondary evidence given by the Plaintiff at paragraph 21 of her affidavit that the NIS assessment scheme indicated that she was found to be suffering from: chronic pain in the hip, lower back and left shoulder and further, had difficulty in

bending, walking, standing for long periods and weakness of her left upper limbs;

- xiv. While a firm diagnosis of Fibromyalgia or Chronic Pain Syndrome has not been made in this case, the Court is nonetheless satisfied that in 1999 when she was medically boarded, the Plaintiff was still suffering from chronic pains in various parts of her body and had difficulty in functioning as she normally did prior to the attack;
- xv. The Court accepts Dr. Belle's medical opinion that recovery from injuries such as those sustained by the Plaintiff on February 13, 1997, is a very individual process which will usually require a long period of rehabilitation before all symptoms are overcome;
- xvi. The Court also accepts Dr. Belle's opinion that the Plaintiff's injuries coupled with the significant emotional component which is present in her case due to the extreme traumatic nature of the events which led to her injuries will have long term effects on the Plaintiff;
- xvii. The Court is satisfied that prognosis of the Plaintiff's condition (made by Dr. Belle in 1997 some 10 months following the attack) to the effect that the likely period of recovery in the Plaintiff's case might extend to between 18-24 months with even thereafter the possibility of persisting "residual distress" has in fact since been substantiated in this case by the medical reports of Doctors Marquez and Harvey, the findings of which have also been accepted by the Court;

- xviii. *Depression and severe Post Traumatic Stress Disorder*: The Court accepts the medical evidence of Dr. Sean Marquez, a neurologist, who first saw the Plaintiff on December 22, 1997 and thereafter examined her on numerous occasions in 1998, 1999, 2000 until her final visit on May 5, 2001;
- xix. Dr. Marquez' report ("BW 5") prepared in 2002 provides, in the view of the Court, a comprehensive and useful historical account of the Plaintiff's medical condition following the attack. The Court finds that the report essentially "fills-in the gaps" and "connects the dots" between the period 1997 and 2001 and states, *inter alia*, that from as early as August 21, 1997 (some 6 months following the attack) the Plaintiff had seen and been examined by Mr. Jerry Thorne, a Consultant Orthopaedic surgeon, who had diagnosed her to be suffering from soft tissue injuries and depression;
- xx. According to the Marquez report, the Plaintiff had visited the clinic of Dr. Malcolm Grant on November 22, 1997 (some 9 months following the attack) and had been diagnosed with and given medication for underlying depression;
- xxi. The Marquez report reveals the fact that in 1998, he had repeatedly recommended that the Plaintiff seek psychiatric or psychological help for her condition but that she had repeatedly refused such a referral;
- xxii. The psychological impact of the trauma on the Plaintiff's health and well-being and the need for psychiatric or psychological intervention was similarly raised by Dr.

Ronald Hinds who concluded in 1999 (some 2 years following the attack) that the Plaintiff had been psychologically traumatized and was in need of a consultation with a psychiatrist and would require continual physical and psychological support for some time yet. (“BW7”);

- xxiii. In 2002, following MRI studies and other investigations which, in his opinion, ruled out any neurological reasons for her persistent symptoms, Dr. Marquez diagnosed the Plaintiff with the following: i) Post-Traumatic Stress Disorder; ii) Somatization symptoms in the setting of a Post Traumatic Stress Disorder and manifesting as chronic pain in the neck, lower back and other various parts of her body; and iii) Depression as a component of Post Traumatic Stress Disorder;
- xxiv. In August 2003, the Plaintiff appears to have consulted Dr. Robin Smith who referred her to Dr. Mahy, the Consultant Psychiatrist at the Queen Elizabeth Hospital;
- xxv. In his referral letter (“BW4”) Dr. Smith stated that the Plaintiff has since the attack developed a generalized anxiety state with frequent panic attacks especially at night associated with insomnia and also frequent “flashbacks” of the physical assault she suffered.
- xxvi. Dr. Smith also expressed amazement that the Plaintiff had never seen a Psychiatrist for help, but expressed the view that part of the reason may be her adamant resistance to going “anywhere near the Psychiatric Hospital”;

- xxvii. While it is regrettable that the Plaintiff's fear of the Psychiatric Hospital, did not allow her to seek help for the psychological effects of her injuries until relatively recently, the Court is satisfied that the opinions of most of the doctors she has seen between 1997 and 2001 establish that it is more probable than not that the Plaintiff has been suffering from the psychological trauma of the attack for the past 13 years;
- xxviii. This finding is supported by the opinion of Dr. Sharon Harvey, a Consultant Psychiatrist who interviewed the Plaintiff for the first time on August 23, 2006. The Court accepts Dr. Harvey's 2006 diagnosis that the Plaintiff is suffering from severe Post Traumatic Stress Disorder the symptoms of which have completely altered her previous way of life, with both her domestic and her occupational life being disrupted;
- xxix. The Court is satisfied that Dr. Harvey's diagnosis confirms the earlier medical opinions of doctors Thorne (August 1997), Grant (November 1997), Belle (December 1997), Hinds (1997 to June 1999) and Marquez (December 1997 to May 2001) that the Plaintiff had from as early as 1997 been suffering, *inter alia*, from underlying depression and from the symptomology associated with the psychological trauma of the attack which led to her injury;
- xxx. The Court accepts the medical evidence of Dr. Harvey given in her March 2009 report that a poor prognosis for the Plaintiff is anticipated due to the fact that the Plaintiff is still

(some 12 years after the event) experiencing core symptoms of Post Traumatic Stress Disorder (“BW3”);

- xxxi. Long term effects of her injuries and loss of amenities: The Court accepts that Plaintiff is now a shell of her former self and is unable to cope and often in pain. She does not sleep well and is now a virtual recluse. She still experiences ‘flashbacks’ to that harrowing day in 1997 when her whole life fell apart;
- xxxii. Triggers of the attack which arise in her normal daily living such as seeing Psychiatric hospital staff, or watching a movie or talk show, still remind her of the event and cause her much distress;
- xxxiii. She has lost interest in sex and in herself as a woman and feels like damaged goods;
- xxxiv. The Court accepts that the Plaintiff has also lost her independence and is now totally dependent on her daughter and her son to assist her. She is no longer able to look after her household or perform household chores such as washing, cooking, cleaning, gardening and doing her own gardening.;
- xxxv. She can no longer pursue her hobbies including gardening, walking, dancing, catering for parties and reading;
- xxxvi. Finally, the Court accepts the medical opinion of Dr. Harvey that the Plaintiff will continue to have ongoing symptoms of Post Traumatic Stress Disorder which will be life-long and will continue indefinitely to require on-going psychiatric care. (“BW3”).

- [92] In the light of the foregoing findings of fact and having considered the submissions of Counsel and the authorities which were cited, the Court is of the view that an award of \$ 303,750.00 is an appropriate award for the Plaintiff's pain, suffering and loss of amenities for the reasons which hereinafter appear.
- [93] In arriving at the global figure for the Plaintiff's pain, suffering and loss of amenities, the Court is satisfied that the Plaintiff suffered 2 distinct injuries as follows: (i) Chronic Pain which developed from soft tissue injuries to her neck, lower back and limbs sustained as a direct result of the attack; and (ii) a psychiatric injury officially diagnosed as severe Post Traumatic Stress Disorder arising directly from the psychological trauma of the attack, the core symptoms of which, according to Dr. Harvey, have been experienced by the Plaintiff over the past 13 years since the attack.
- [94] Although Counsel for the Plaintiff urged the Court to find that the Plaintiff also suffered from severe Chronic Pain Syndrome, which she suggested was virtually synonymous with Fibromyalgia, the Court has declined to make such a finding in the absence of a formal medical diagnosis of either of these two conditions by any of the registered medical practitioners who prepared reports in this case. In short, in the absence of a doctor's diagnosis, the Court is not prepared to accept the opinions of the 2 physiotherapists (Levett and King) that the Plaintiff was in fact suffering from Fibromyalgia.
- [95] While a succession of medical practitioners have, since the attack, diagnosed the Plaintiff to be suffering from underlying depression and chronic pain, the Court accepts the opinion of Dr. Marquez (who had the advantage of examining and treating the Plaintiff on numerous

occasions between 1997 and 2001) that the Plaintiff's underlying depression and chronic pain were manifestations of the Plaintiff's symptomology **within the setting of** her severe Post Traumatic Stress Disorder.

- [96] The Court has been mindful of the need to take account of what the Court finds to be the obvious 'overlap' between the award which the Court is required to make for the Chronic Pain arising from the Plaintiff's soft tissue injuries for which she was medically boarded in 1999 on the one hand, and on the other, the award for the Plaintiff's severe Post Traumatic Stress Disorder in which chronic pain is a component.
- [97] An appropriate discount has accordingly been made from the total award for Pain, Suffering and Loss of Amenities (PSLA) to reflect the perceived overlap. The Court is satisfied that this approach has been expressly approved in cases like this where the Court is considering awards for separate injuries where there is a perceived overlap. See *Personal Injury Schedules: Calculating Damages, 2nd edition, Langstaff, Buchan, Latimer-Sayer & Nelson-Jones @ pp. 162-164.*
- [98] In arriving at the award, the Court also derived assistance from the suggested ranges for awards for Chronic Pain and severe Post Traumatic Stress Disorder respectively in the Judicial Studies *Guidelines for the Assessment of General Damages in Personal Injury Cases, 9th Edition* and from the cases cited by Counsel on both sides. The case of *Re: Marshall , Knott's case* and the case of *Bird v. Husain* were especially helpful to the Court in setting the parameters for the award.

[99] The award for the Plaintiff's Pain, Suffering and Loss of Amenities (PSLA) is broken down as follows:

(i) Chronic Pain (falling short of chronic pain syndrome or fibromyalgia but arising from initial soft tissue injuries)	-	\$ 87,500.00
(ii) Severe Post Traumatic Stress Disorder	-	\$250,000.00
(iii) Less 10% discount for 'overlap'	-	<u>\$ 33,750.00</u>
Award for PSLA	-	<u>\$303,750.00</u>

(ii) Devalued position on the job market: This head of damages was agreed in the sum of \$10,000.00 which is approved by the Court.

(iii) Loss of Do-It-Yourself function: No award is made under this head since the Court was advised that the claim had been withdrawn.

General Damages – (b) pecuniary losses:

[100] (iv) Past Domestic Assistance: The award under this head of damages was agreed at \$58,240.00 but has been treated and allowed as an item of Special Damages. (See [101] below)

(v) Future Domestic Assistance: The award under this head of damages was agreed at \$41,600.00 and is approved by the Court.

(vi) Past Gardening Assistance: The award under this head of damages was agreed at \$6,000.00 but has been treated and allowed as an item of special damages. (See [101] below)

(vii) Future Gardening Assistance: No award is made under this head since the Court was advised that this claim had been withdrawn.

(viii) Future loss of earnings: The award under this head of damages was agreed in the sum of \$169,578.56 which sum is approved by the Court.

(ix) Future Medical care: The award under this head of damages was agreed in the sum of \$43,800.00 which is approved by the Court.

Special Damages:

[101] (a) Medical expenses (<i>agreed</i>)	-	\$ 23,976.50
(b) Transportation (<i>agreed</i>)	-	\$ 3,493.00
(c) Pharmaceutical expenses (<i>agreed</i>)	-	\$ 10,336.22
(d) Rent (<i>withdrawn</i>)	-	<i>nil</i>
(e) Past Domestic Assistance (<i>agreed</i>)	-	\$ 58,240.00
(f) Past gardening assistance (<i>agreed</i>)	-	\$ 6,000.00
(d) Past Loss of Earnings (<i>agreed</i>)	-	<u>\$166,415.44</u>
Total Special Damages	-	<u>\$268,461.16</u>

[102] **Summary of the Awards:** In summary, the awards which the Defendant shall pay to the Plaintiff are as follows:

General Damages:

(i) Pain, suffering and loss of amenities	-	\$303,750.00
(ii) Devalued position on job market	-	\$ 10,000.00
(iii) Future domestic assistance	-	\$ 41,600.00
(iv) Future loss of earnings	-	\$169,578.56
(v) Future medical care	-	<u>\$ 43,800.00</u>
Total General Damages	-	<u>\$568,728.56</u>

Special Damages:

Total Special Damages (*Details at para [101]*) - \$268,461.16

[103] **Interest:** The above awards will bear interest on the Special Damages at the rate of 4% per annum from the date of the issue of the Writ until today and thereafter at 8% per annum until payment, and on the General Damages at the rate of 8% per annum from today until payment.

[104] **Costs:** The Plaintiff is entitled to her legal costs, certified fit for two attorneys-at-law to be agreed or taxed.

**Maureen Crane-Scott
Judge of the High Court**